



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,223	03/23/2004	Mark H. Miller	009554-0308963	1747

909 7590 04/21/2006

PILLSBURY WINTHROP SHAW PITTMAN, LLP
P.O. BOX 10500
MCLEAN, VA 22102

EXAMINER

ROWAN, KURT C

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 04/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/806,223
Filing Date: March 23, 2004
Appellant(s): MILLER ET AL.

MAILED

APR 21 2006

GROUP 3600

Robert Perez
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed June 24, 2005 appealing from the Office action mailed January 28, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

As stated on page 3 of the Appellant's Brief.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 5,255,468	Cheshire, Jr.	Oct. 26, 1993
US 4,506,473	Waters	March 26, 1985

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-123 are rejected under 35 USC 103 as being obvious over Cheshire in view of Waters.

(10) Response to Argument

Applicant argues that the claims are not obvious over the cited references since the prior art references when combined do not teach or suggest all of the claimed limitations, there is no motivation or suggestion to combine the references and there is commercial success which is evidence of non-obviousness. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art. The combination of references merely contemplates substituting one known insect attractant (carbon dioxide) for another (such as light, heat and motion). Cheshire inherently suggest the counterflow relationship between the

inflow and the outflow since air is pulled into the trap, air must be blown out of the trap. Hence the combination has a motivation to combine the prior art references, has a reasonable expectation of success and teach or suggest all of the claim limitations. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The motivation to combine the references comes from providing Cheshire with a known insect attractant such as the carbon dioxide used by Waters. It also should be pointed out that in Cheshire, using light as the insect attractant, if light can be considered to be in the in the outflow, some of the claims can be interpreted to be anticipated by Cheshire. Cheshire shows a counterflow trap noting air and insects are pulled into the trap as shown in Fig. 4. The fan 19 blows air out the bottom of the trap as disclose in column 7, lines 10-15. This is a counterflow and also the inlet opening is higher than the outflow. Inherently the counterflow provides an overlapping region of inflow and outflow since insects attracted to the device will use the attractant in the outflow to move toward the trap where they are pulled into the inflow. No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

KR

Conferees:

PP

MC

JK

Handwritten signatures of the conferees. The signature for PP is a cursive 'P' with a loop. The signature for MC is a bold, blocky 'MC'. The signature for JK is a long, sweeping cursive line.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

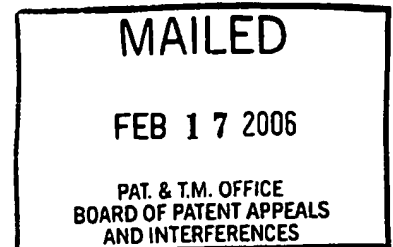
Ex parte MARK H. MILLER, BRUCE E. WIGTON,
and KENNETH LONNGREN

Application No. 10/806,223

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received at the Board of Patent Appeals and Interferences on January 24, 2006. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On September 9, 2005, the examiner has mailed an examiner's answer. In the Evidence Relied Upon section, page 3, paragraph (8), the examiner has stated that "No evidence is relied upon by the examiner in the rejection of the claims under appeal." A review of the file reveals that references were applied to the statement of rejection in the Grounds of Rejection section,



Application No. 10/806,223

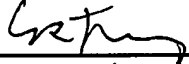
paragraph (9), of the examiner's answer. Before further review, the examiner must submit a corrected examiner's answer that will include in the Evidence Relied Upon section, the list of references mentioned in the statement of rejection.

Accordingly, it is

ORDERED that this application be returned to the examiner to: 1) vacate the examiner's answer and issue a revised Examiner's Answer having the missing references listed under the Evidence Relied Upon section; and 2) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
AND INTERFERENCES

By: _____


Craig R. Feinberg
Program and Resource Administrator
(571)272-9797

cc: Pillsbury Winthrop Shaw Pittman, LLP
P.O. Box 10500
McLean, VA 22102

CRF/tdl